

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 10th January, 1996.

CRIMINAL APPEAL NO. 846 OF 1987

For Approval and Signature:

THE HON'BLE MR. JUSTICE A.N. DIVECHA

And

THE HON'BLE MR. JUSTICE H.R. SHELAT.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether Their Lordships wish to see the fair copy of Judgment ?
4. Whether this case involves substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

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Shri A.K. Mankad, Advocate for the appellant.

Shri S.T. Mehta, Addl. Public Prosecutor for the respondent.

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Coram: A.N. Divecha, J. & H.R. Shelat, J.
(10-1-1996)

ORAL JUDGMENT: (Per: H.R. Shelat, J.)

The present appeal has been directed against the judgment and order dated 10th September 1987, passed by the then Additional Sessions Judge at Palanpur, in Sessions Case No. 55 of 1985, whereby the appellant came to be convicted of the offences under Section 302, and 325, and sentenced to for the offence under Section 302 life imprisonment and for the offence

under Section 325 Indian Penal Code two years imprisonment and fine of Rs.100/-, in default imprisonment for one month more.

2. The facts in brief may be stated. Lilaben is the wife of the appellant. She was feverish and used to remain sick. The Appellant was superstitious about her being demoniac and being obsessed with phantom he was not free from demonism. Bhikhaji Ramaji, the deceased was residing about 300 feet away from his place. He was considered to be a witch-doctor as he knew demonolatry and witchery as well as devilry. It was also the belief of the village people that he was able to drive away or subjugate evil spirit, if any. Hence whoever wanted to subjugate the evil spirit namely apparition, bogle, ghosts, demon etc., used to call him and have his services for the performance of necessary rituals. On 26th June 1985 after the supper the deceased and his family members were chitchatting and passing their leisure hours. At that time the appellant called him for necessary ritual performance so that his wife could be cured. The deceased Bhikhaji Ramaji went to the place of the appellant. Bijalji, Babuji, Chhaganji were also called from the neighbourhood. They were all sitting in circle. The deceased then called for handful of wheat. The appellant brought the wheat and placed in the centre for necessary ritual performance. Suddenly the appellant came out with a wooden-pestle (Sambela) and gave a blow thereof on the head of the deceased. Maganji Ujaji tried to rescue and hence the second blow struck on his head as a result he was also injured. Both sustained bleeding injury. Bhikhaji Ramaji became unconscious. His family members were informed. Mandanji Bhikhaji his son went to the place of the appellant. The deceased and injured Maganji were then taken to the hospital. Mandanji Bhikhaji informed the police patel and the sarpanch and thereafter a complaint was lodged before the Palanpur Taluka police station. The police officer of that police station took the investigation on hand and at the conclusion of the investigation he filed the chargesheet before the Court of the Chief Judicial Magistrate at Palanpur against the appellant for the offences u/s. 302 and 307 I.P.Code alleging that the appellant, by giving a wooden-pestle blow to Bhikhaji Ramaji, intentionally caused death causing such injury in the ordinary course of nature sufficient to cause death, and also voluntarily caused injury by wooden-pestle to Maganji Ujaji, under such circumstances with such knowledge or intention that if he by that act caused death he would be guilty of murder. The learned Chief Judicial Magistrate was not competent in law to hear and decide the case. He therefore committed the case to the Court of Sessions at Palanpur. The case then came to be registered as Sessions Case No. 55 of 1985. The then learned Sessions Judge at Palanpur then assigned the case to the then learned Additional Sessions Judge at Palanpur for hearing and disposal in accordance with law. The learned Judge below then framed the charge at Exh.3 against the appellant. The appellant

pleaded not guilty and claimed to be tried. The prosecution then led necessary evidence. After appreciating the evidence on record and considering the rival submissions, the learned Judge below reached the conclusion that the prosecution had established the charge beyond reasonable doubt. He therefore held the appellant guilty of the offences under Section 302 and 325, I.P.C. and acquitted of the offence under Section 307, I.P.C., and sentenced him as stated hereinabove. Being aggrieved by such judgment and order, the appellant has preferred this appeal.

4. Mr. Mankad, the learned Advocate representing the appellant assailed the judgment and order of the lower Court taking us through the entire evidence on record and submitting that the learned Judge was not right in appreciating the evidence and drawing the conclusions against the appellant, although there was no evidence justifying the conviction and sentence. He then tried his best to point out the errors of the learned Judge below so as to show that the innocent person was unduly put to difficulties, but could not even carp. On behalf of the prosecution, Mr. Mehta, the ld. A.P.P., refuted all those submissions and submitted that no error was committed. The judgment and order of the lower Court were neither perverse nor arbitrary, and there was no need to set the evaluation right as every thing was done quite in consonance with law.

5. Science makes the man happy while superstition and quack-remedies lead to dire consequences is the eduction of this case. Perusing the evidence on record, no doubt is left in our mind that the prosecution has succeeded in establishing the charge, and the learned Judge has committed no error either of law or of fact. After the incident, Dr. P.R. Patel, whose evidence has been recorded at Exh.18 examined Maganji Ujaji. He has supported the case of the prosecution about the injury sustained by Maganji Ujaji and has opined that the injury he saw is possible by hard and blunt substance namely the wooden-pestle shown to him in the Court. Dr. A.H. Patel (Exh.13) performed the post mortem of Bhikhaji Ramaji's dead body. He could see the wound on the middle of the head and occipital region and swelling on the right side of the occipital region. According to him also the injury he noted was on the vital part and was sufficient in ordinary course of nature to cause death. The injury he noted was ante mortem. He has also opined that the injury could have been caused by hard and blunt substance namely the wooden-pestle. It is thus evident that the death of Bhikhaji Ramaji was unnatural. Who did the wrong is the question that now arises for consideration.

6. Mandanji was informed after the incident was over because he was at home. Hearing that his father Bhikhaji Ramaji was bunkered after being assaulted and beaten severely, he went to the place of the appellant where the incident had happened. He

found his father in hopelessly wounded condition and was struggling for life. He could also see severe bleeding. He also did not miss to see that Maganji had also sustained bleeding injury on the head. He did not find the appellant as he had fled. In the cross-examination his testimony is not at all shaken. He has firmly stood to the acid-test. Maganji Ujaji the injured deposed before the lower Court at Exh. 21. His evidence makes it clear that Ramilaben the daughter of the appellant (now dead) had been to his place to call him. He therefore went to the place of the appellant and joined the ritual performance shortly to be undertaken for driving out the evil spirit if any. Bijalji, Babuji and Chhaganji were also present. The deceased for ritual performance called for handful of wheat which the appellant brought, but thereafter immediately he took the wooden-pestle and gave a blow on the head of Bhikhaji Ramaji. Maganji Ujaji when tried to rescue, he also sustained injury on his head. Babuji Ahuji, Exh.29 was also present at the time of the incident. He had lighted incense-sticks for the purpose of ritual performance. He also categorically supports the case of the prosecution stating that the deceased was called for necessary ritual performance so as to drive away or subjugate the evil spirit if any. When they were just watching the numbers of the wheat-grains strewed on the ground the appellant came there with the wooden-pestle, with which he gave the blow on the head of the deceased as a result the deceased sustained fatal injury noted by Dr. A.H. Patel. Maganji Ujaji tried to rescue and therefore the second blow struck to the head of Maganji Ujaji causing grievous injury. The evidence of other witnesses is not material as they are not the eye-witnesses; but it may be stated that their evidence has the corroborative value. Dhariyaben had gone to call the deceased and inform his son. Her evidence has been recorded at Exh.30. Jesangbhai reached there after the incident was over. He is examined at Exh.31. Both were there after the incident was over. They could see Bhikhaji and Maganji in injured condition and there was profuse bleeding. Maganji had puked too. They could also know that the appellant had given the blow and had run away, soon after the incident. They have thus stated about the ghastly scene, ordinarily taking shape after some one is whacked. Their say thus lends support to the prosecution. When the evidence of above referred witnesses is examined with meticulous care and finicky details, we do not find anything which would support the defence and damage the case of the prosecution. Their testimony inspires confidence leaving no room to doubt. In the cross-examination also, their testimony is not at all shaken. In short their evidence makes it crystal clear that the appellant after calling Bhikhaji Ramaji, Mandanji and others for necessary ritual performance as per witchery for the reasons best known to him taking out the wooden-pestle he gave the blow on the head of Bhikhaji and the second blow to Maganji Ujaji, consequent upon which Bhikhaji Ramaji died before he could be taken to the hospital, and luckily Maganji survived.

7. The doctor has clearly opined that the injury he noted on the person of Bhikhaji Ramaji was sufficient in the ordinary course of nature to cause death. His opinion is not assailed and we do not have any reason to take a view different from the opinion expressed by the doctor. On the basis of that evidence, we find that the learned Judge has committed no error in holding the appellant guilty of the offence under Section 302, I.P. Code. The learned Judge has also committed no error in acquitting the appellant of the offence under Section 307, and convicting him of the offence under Section 325 as the opinion of Dr. Patel does not warrant the conviction under Section 307.

8. Thinking, of course looking to cogent and convincing evidence on record, that it would be impossible to have a lee-way, the learned Advocate representing the appellant made a lame attempt submitting that there could not be the intention to kill because in such ritual performance a man would be hypnotised and stupefied and might be under demoniac influence. He would therefore be shrugging and quaking and would certainly lose his own wits. Being in the torpid condition he would not know what he was doing or is doing. He therefore urged to lean towards less severe namely the offence namely offence u/s. 304 or 325, I.P.C., keeping such mitigating factors in mind. The submission cannot find favour. After Mandanji Bhikhaji went there soon after he was informed about the incident he found that the appellant had run away; and that negatives his stupor or torpid-condition rendering him to lose his wits affecting formation of the required animus. The fact that he ran away shows that he was quite conscious about the act he had done, and he also thought what to do in order to escape the consequences and to save his skin. His act therefore can be termed deliberate with the intention to kill and volition to cause injury. Of course a single blow has been given to Bhikhaji Ramaji, but simply because a single blow is given it is not the circumstance justifying to jump to the conclusion that the case will fall within the ambits of Section 304 and not Section 302, I.P. Code. It all depends upon the circumstances of each case. The Court has to, considering evidence on record try to find out the intention. If death is the most probable result, intention to cause death can well be spelt out or boded. The intention is the internal and invisible process of the mind of the accused, and can be judged by his external and visible acts. In this case, one blow was given on the head, the vital part of the body and as per the opinion expressed by the doctor, the injury was sufficient in the ordinary course of nature to cause death meaning thereby the death was the most probable result. Further as stated above the appellant ran away after causing injury. It should hardly be stated that the wooden-pestle is very heavy in weight and gigantic in shape and size. It does have a heavy iron ring at the bottom. One effective blow on the vital part is

sufficient to cause fatal injury, and that cannot be out of the knowledge of even a rustic. The appellant also attempted to give another blow which struck Maganji as he tried to rescue the deceased. The cumulative effect of such circumstances points to the intention to kill. The contention advanced in this regard therefore fails.

9. It is not that the person would not commit the offence at his own place and would like to go elsewhere for committing the same. Nothing can be prophesied. The wickedness in the mind can project at any time and then a person obsessed with the same would not mind the place. At times one's own home is considered to be safer too, as palatable defence can be planned out suitably later on. Further provocation and instant action go together or follows in quick succession. A prudence does not find place but it is thrown in the background when the mind turns wicked. A man then does not care for the presence of others. He does what his ill-will dominates to do. We therefore cannot agree with the submission of Mr. Mankad, the learned advocate representing the appellant that the appellant must not have committed the offence at his place and that too in the presence of others.

10. No other submission was advanced on behalf of either of the parties. For the reasons stated hereinabove, we find that the learned Judge below has committed no error and has rightly convicted sentenced the appellant of the offences as stated hereinabove. The appeal is devoid of merits and deserves to be dismissed. In the result, the appeal is hereby dismissed, and judgment and order of the lower Court are maintained.

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